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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 314

PACIFIC-ATLANTIC STEAMSHIP CO. AND E. J. LAVINO & COMPANY, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Virginia (R. 31) is reported at 81 F. Supp. 777. The opinion of the United States Court of Appeals (R. 529) is reported at 175 F. 2d 632.

JURISDICTION

The judgment of the Court of Appeals was entered on June 9, 1949 (R. 544). Petitioners' motion for rehearing was denied in an order entered on August 4, 1949 (R. 558). The petition

for a writ of certiorari was filed on September 7, 1949. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

1. Whether the court below erred in sustaining the district court's findings that the merchant ship *Oregon* was at fault in failing to keep a proper lookout and in failing to observe the Starboard Hand Rule.

2. Whether the district court exceeded its discretion in refusing to require production of the record of testimony before the Naval Court of Inquiry.

STATUTES, RULES, AND REGULATIONS INVOLVED

The pertinent provisions of the statutes, rules, and regulations involved are set forth in the Appendix, *infra,* pp. 20-27.

STATEMENT

At 4:42 or 4:43 a. m. on December 10, 1941, three days after the Japanese attack at Pearl Harbor, the United States battleship *New Mexico* (escorted by three destroyers) and the merchant ship *Oregon* collided at a point in the Atlantic Ocean about forty miles south of Nantucket Shoals Lightship. Both vessels suffered damage as a result of the collision, and the *Oregon* sank between 1:00 and 2:00 p. m. the same day while endeavoring to proceed to Boston. Petitioner Pacific-Atlantic Steamship Company, owner of the *Oregon,* insti-

tuted a libel against the United States under the Public Vessels Act (43 Stat. 1112, 46 U. S. C. 782, *infra,* pp. 23-24) in the United States District Court for the Eastern District of Virginia, for the loss of that vessel, alleging that the collision and loss were caused by the negligence of the officers in charge of the *New Mexico.* Petitioner E. J. Lavino & Company, owner of a part of the cargo of the *Oregon,* intervened in the libel proceeding,[1] and the United States filed a cross-libel, alleging that the collision was caused by negligent navigation on the part of the *Oregon* (R. 31-34). The district court concluded that the collision was caused solely by faults and errors in navigation on the part of the *Oregon,* and, after granting Pacific-Atlantic's petition for a statutory limitation of its liability, decreed that the United States recover on its cross-libel from Pacific-Atlantic for the damage sustained by the *New Mexico* (R. 77-78, 83). The district court further decreed that petitioner E. J. Lavino & Company, owner of a part of the cargo of the *Oregon,* was entitled to no recovery on its intervening libel from either the United States or Pacific-Atlantic (R. 83-84). The court below approved the district court's determination that the collision was caused solely by the *Oregon's* negligence, and affirmed the decree of that court (R. 529-543).

---

[1] The libel and intervening petition were subsequently amended to include charges of negligence on the part of the destroyers which were escorting the *New Mexico* (R. 82).

Prior to the collision in question, the *Oregon* was moving on a course of 340 degrees true (about north-northwest) and the *New Mexico* on a course of 216 degrees true (about southwest by south). The speed of both ships was approximately 14 knots. Both were running without lights pursuant to a Navy Department order made necessary by our recent entry into the war (R. 74). Escorting the *New Mexico,* proceeding on the same course and at the same speed, were three destroyers, the *Sims,* the *Hughes,* and the *Russell.* These, in the order named, were located in formation 20 degrees forward of the port beam, dead ahead, and 20 degrees forward of the starboard beam of the *New Mexico,* forming an arc of a circle 2,000 yards from the latter (R. 21, 29, 76).

The night of the collision was cloudy but a moon shone through the overcast; the district court found from the evidence that unlighted ships of the size involved here were visible to the naked eye at a distance of about 2 miles (4,000 yards) (R. 89, 106, 346, 373). When the 2 ships were some 5,000 yards apart, the *Oregon,* bearing about 45 degrees on the *New Mexico's* port bow, was sighted through binoculars by the latter's officer of the deck (R. 155, 75). The *Oregon* was sighted from the destroyer *Sims* at a distance of 4,000 yards, and from the destroyer *Hughes* at approximately the same distance (R. 254-255, 264-265, 308, 419, 428). These destroyers challenged the *Oregon* with blinker light signals, but received no response (R. 437, 438,

476). The *New Mexico,* continuing unlighted for the purpose of security, maintained her course and speed in accordance with the rule requiring a vessel on the starboard hand of another to do so (R. 125; see Article 21, *infra,* p. 22).

The *Oregon's* captain testified that he and his lookout first sighted the *New Mexico* at a distance of between 2,000 and 3,000 yards (R. 96-97, 340). Up to this point, nobody on the *Oregon* had seen any of the destroyers (R. 76). Immediately upon sighting the *New Mexico,* the *Oregon* turned on her lights; within 20 seconds later, the *New Mexico* was lighted (R. 75). The distance between the ships when both were lighted was variously estimated by different witnesses (*E.g.,* R. 91, 188, 265-266, 441). The district court, "on weighing all of the evidence", was convinced that it "was not less than 1500 yards and possibly as much as 2,500 or 3,000 yards" (R. 57). The court's findings of fact report the distance as 1500 to 2200 yards (R. 75).

The captain of the *Oregon* testified that the *New Mexico's* bearing appeared to remain the same after her lights came on as it had been when he first sighted her (R. 328). He and a seaman who had been at the wheel testified that, following the *New Mexico's* display of lights, he ordered his helm left and then hard left, maintaining his ship's full speed until the collision (R. 89, 108, 330). The commanding officer and other officers of the *New Mexico* stated that no change was observed in the *Oregon's* course until practically the point of colli-

sion (R. 125-126, 158, 189). The district court found that the *Oregon* made no change in her course and speed after sighting the *New Mexico* "until approximately a minute before the collision when she turned to her left across the course of the *New Mexico* in an attempt to avoid collision" (R. 75). The *Oregon* gave no signal at any time of her proposed maneuvers (R. 75).

When the ships had closed to a distance of about 700 yards and it appeared to the *New Mexico's* commanding officer that the *Oregon* could no longer avoid collision by her own action, the *New Mexico's* rudder was ordered full right and her engines full speed astern (R. 125). At this point, however, with the *Oregon* crossing her bow from port to starboard, the *New Mexico's* action did not succeed in preventing the collision. The ships met at an angle of between 20 and 45 degrees, the stem of the *New Mexico* striking the starboard side of the *Oregon* (R. 76).

After a more detailed review of the evidence than has been presented here, the district court held that the collision had been caused solely by the *Oregon's* faulty navigation (R. 77-78). Having found that weather conditions at the time of the collision were such as to afford visibility of an unlighted ship as large as the *New Mexico* at a distance of 2 miles, the court concluded that the circumstances of this case did not warrant departure from the International Rules for Navigation (R. 77). These Rules, which are embodied in the Act

of August 19, 1890, as amended, *infra,* pp. 20-23, impose upon all ships the duty of keeping a proper lookout. In addition, they direct a ship sighting another to starboard on a crossing course to keep out of the other's way, to avoid crossing in front of the other where possible (Articles 19 and 22, *infra,* pp. 21-22), and, if necessary, to "slacken her speed or stop or reverse", 26 Stat. 327 (Article 23). The Court held that the *Oregon* had negligently violated the rules in (1) failing to keep a proper lookout; (2) failing to take appropriate action when she first sighted the *New Mexico* on her starboard hand; (3) failing, after both ships were lighted, to avoid crossing the *New Mexico's* bow; and (4) giving no signal to warn of her change of course when she finally turned to the left immediately after the collision (R. 77-78). The court below, after another extensive review of the evidence, approved these conclusions (R. 531-542).

On December 15, 1941, in accordance with its administrative practice, the Navy convened a Court of Inquiry to investigate the circumstances of the collision. Notice of this action was given to the *Oregon's* owner and agent. An invitation to the *Oregon's* witnesses to appear and testify was tendered and declined. The Naval Court received in evidence excerpts from the logs and other documents of the naval vessels involved and the reports of the navigating officers. In addition, officers of the ships and some of the *New Mexico's* enlisted personnel testified orally. A stenographic record of the Court's proceedings was made (R. 512-513).

In April, 1942, petitioner Pacific-Atlantic Steamship Company moved for a pre-trial order of discovery of the naval vessels' logs, reports by navigation officers concerning the collision, and various other documents, including a copy "of any and all testimony" by personnel of the *New Mexico* before the Naval Court of Inquiry (R. 8-9). The motion was granted as to all the materials sought with the exception of the record of the Court of Inquiry (R. 12-13). Although discovery of this record was denied, petitioners were later supplied with true copies of testimony given before the Naval Court by the witnesses called by respondent to testify during the course of this action (R. 468-469, 516-517). In addition, petitioners were provided with all the documents of which discovery had been granted and with complete answers to their interrogatories (R. 4-7, 515).

The motion for discovery of the Court of Inquiry's record was renewed at the close of the evidence in the trial court, and again denied. In a discussion with counsel, the court indicated that the basis for its ruling was a conclusion that petitioners had failed to establish good cause for the granting of their motion (R. 491). On appeal to the court below, petitioners again moved for production of the naval record (R. 480-510). That court, while it apparently entered no formal order on the motion before it, held that the record in question was privileged from discovery and that

the trial court had therefore properly denied the motion (R. 535-536).

ARGUMENT

Both of the questions raised by the petition for certiorari are of the type peculiarly within the competence of the trial court. Whether the *Oregon* was properly held to be solely at fault depends primarily on the district court's findings of fact. Whether petitioners' repeated motions for production of the Naval Court's record reflected any real need for information was a question which that same court, exercising the discretion necessarily entrusted to it, was in the best possible position to resolve. It is submitted that these questions of fact, decided adversely to petitioners in two courts below, present no basis for further review here. *Just* v. *Chambers,* 312 U. S. 383, 385; *Williams Manufacturing Co.* v. *United Shoe Machinery Corp.,* 316 U. S. 364, 367; *Goodyear Tire & Rubber Co., Inc.* v. *Ray-O-Vac Co.,* 321 U. S. 275, 278.

1. Petitioners urge (Pet. 5-6, 9, 17-20) that the Starboard Hand Rule (Article 19, *infra,* pp. 21-22) should have been held inapplicable until the ships were lighted, that the *New Mexico's* lights were turned on too late for the *Oregon* to maneuver properly under the Rule, and that the *New Mexico* should therefore have taken avoiding action sooner than it did. Each of these contentions is refuted by the factual determinations of both lower courts.

To repeat briefly, the district court found that, with a proper lookout, the *Oregon* would have sighted the *New Mexico,* a much larger ship, sooner than she did (R. 51, 77-78). Cf. *The New York,* 175 U. S. 187, 204. Had the *Oregon* sighted the *New Mexico* when the court found she should have, and when the *New Mexico* as the privileged vessel was entitled to assume she had (cf. *The Delaware,* 161 U. S. 459, 468-469; Farwell, *The Rules of the Nautical Road,* p. 177 (2d ed. 1944)), there would have been ample time for proceeding in accordance with the Starboard Hand Rule. In any event, the court also found that there was still time for the action required by the Rules after both ships had been lighted (R. 78).[2] The *New Mexico* was required by Article 21 of the Rules to maintain her course and speed (*infra,* p. 22). Until it became apparent that a collision could not otherwise be avoided, a change in course and speed would have exposed her to a charge of negligence. See *The Albert Dumois,* 177 U. S. 240, 249; Farwell, *op. cit., supra,* p. 75; La Boyteaux, *The Rules of the Road at Sea,* p. 124 (1920). At the critical moment, when, without signalling, the *Oregon* attempted the questionable maneuver of turning to port instead of attempting to pass port to port, the *New Mexico*

[2] The evidence (R. 328, 348) showed that both ships' bearings remained constant with respect to each other. The Steering and Sailing portion of the Rules, *infra,* p. 21, incorporating a basic principle of navigation, warn of a constant bearing as a danger sign.

made what the courts below found were entirely reasonable efforts to avoid the collision.

The argument that the blackout was such a special circumstance as to render the Starboard Hand Rule (Article 19, *infra*, pp. 21-22) inapplicable, we submit, completely overlooks the character of the navigation rules. Those rules are more than statutory commands; they are fundamental principles of good seamanship, as much a part of the mariner's mental equipment as an American motorist's knowledge that vehicles approaching each other must pass to the right. See *The F. J. Wolfe* [1946], P. 91, 94-96; Knight, *Modern Seamanship*, p. 461 (11th ed., Hall, 1945). To suggest that the rules were abrogated by the blackout is an argument for the abandonment of basic precautions when they are most needed. The situation pictured would leave unlighted ships in the impossible predicament of never being able to predict each other's movements. No such result is required by the cases petitioners cite as conflicting with the decision below. *Lind* v. *United States*, 156 F. 2d 231 (C. A. 2); *United States* v. *The Australia Star*, 172 F. 2d 472 (C. A. 2). As Judge Learned Hand, author of the opinion in the *Lind* case, has stated in a later opinion, while the necessity of traveling without lights admittedly constituted a "special circumstance," "it does not follow that the rules were in all respects in suspense." *Publicover* v. *Alcoa S.S. Co.*, 168 F. 2d 672, 674 (C. A. 2). Read without regard to the

significant factual differences between them and the case at bar, the *Lind* and *Australia Star* decisions stand for the proposition that an unlighted ship cannot claim to be privileged as against a lighted ship which would ordinarily be burdened. Here, on the other hand, the courts below found that the *Oregon* could reasonably have been expected to observe the Starboard Hand Rule when both ships were unlighted, and that, in any case, the ships were both lighted in ample time for observance of the Rule. Cf. *The Folkestone,* 72 Lloyd's List Rep. 240, 244; *The Exanthia,* 77 Lloyd's List Rep. 207, 209-210. These findings, fully supported by the record, are not made appropriate subjects for this Court's review by the fact that other findings may have been warranted in the differing circumstances of other cases.

2. Admiralty Rule 32, *infra,* pp.25-26, which petitioners contend was violated by denial of their motions for discovery, provides that a party seeking discovery must show "good cause therefor" and that production may be required only of matter "not privileged." We submit that both of these provisions sustain the decision below.

a. It has never been supposed that the rules permitting discovery compel a court to order the production of documents automatically upon motion. On the contrary, the provision in Admiralty Rule 32 requiring that "good cause" be shown for such production necessarily invests district courts with

discretionary power to judge whether a movant has established his need for the materials sought. See *Hickman* v. *Taylor,* 329 U. S. 495, 512; *Newell* v. *Phillips Petroleum Co.,* 144 F. 2d 338, 340 (C. A. 10).[3] In exercising its judgment in the present case the district court far from creating the conflict petitioners assert with *Hickman* v. *Taylor, supra,* has quite clearly been moved by considerations stressed by this Court in that decision.

Here, as in *Hickman* v. *Taylor,* the motion for discovery sought records of oral testimony of witnesses available for questioning by the movants. See 329 U. S. at 508. Petitioners' contention that the identity of some of these witnesses was not disclosed to them (Pet. 12) hardly seems weighty in view of their failure to examine those who were known to them and at least one of whom respondent offered to procure (R. 516). There is, furthermore, no suggestion that respondent, who answered completely all interrogatories and supplied extensive additional information, would not have furnished the names of witnesses upon demand. Cf. *The Australia Star,* 1946 A.M.C. 542 (S.D.N.Y.) and *The Wright and the Papoose,* 2 F. Supp. 43 (E.D.N.Y.), in which discovery of the Navy record was denied, but movants were permitted to reach the identity of witnesses.

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[3] Admiralty Rule 32 is, with variations of no consequence here, identical with Rule 34 of the Federal Rules of Civil Procedure.

Assuming, for the moment, that the material sought here was, as in *Hickman* v. *Taylor,* not technically "privileged," it was nevertheless material which respondent wished, in the interests of effective naval administration, to keep confidential. The Navy has consistently taken the view that the value of its courts of inquiry depends considerably on the fact that their records are privileged against disclosure. See the communication to the court below by Acting Secretary of the Navy Kenney, R. 524. Such "courts" are constituted solely for the purpose of securing information as a basis for possible disciplinary action or for the correction of deficiencies in naval administration. *Naval Courts and Boards,* c. 10, § 720, quoted at R. 522. It is believed that the assurance of non-disclosure promotes a freedom in testimony which would not otherwise exist and which is essential if these investigatory procedures are to serve their purpose. This administrative judgment is entitled to be weighed against petitioner's suggestion (Pet. 16) that the policy in question is "naively" based on a fear of disclosures "tending to indicate liability of Naval vessels." Cf. *Duncan* v. *Cammell, Laird & Co.* [1942] A.C. 624, 638-643.

In defense of this policy respondent opposed the motion for discovery. In support of the motion, petitioners made dark references to "key" witnesses (R. 468; Pet. 10-11, 12), but were unable to claim that these witnesses were unavailable to

them or to show in any other way that the development of their case would be prejudiced by nondisclosure of the naval court's record. Cf. *Hickman* v. *Taylor, supra,* at p. 509. Without relying at all on the privileged character of this record, the trial court concluded that petitioners had failed to show good cause for its production. This assessment of the competing interests, by the court which tried the facts and could weigh on the spot the suggestion that damaging information was being suppressed, was, we submit, an entirely proper exercise of that court's discretion, correctly affirmed below.

b. The court below, in holding that discovery had been properly denied, pointed out that "the United States cooperated rather handsomely in enabling libelants to present their side of this case" (R. 535). And while the district court's ruling would appear to be sufficiently justified by petitioners' failure to show good cause for discovery, the court below recognized the "privileged status" of the record in question as an additional ground for the decision (R. 535).

Under R.S. 161, *infra,* p. 25, the "head of each department is authorized to prescribe regulations, not inconsistent with law, for * * * the custody, use, and preservation of the records, papers, and property appertaining" to his department. The Secretary of the Navy has provided by regulation that his Department's records may not be pro-

duced in court without his authority (*Naval Courts and Boards,* Art. C-15, *infra,* pp. 26-27), and, for reasons of policy which have already been mentioned, has consistently refused to authorize disclosure of court-of-inquiry records (R. 523). Unless the Secretary's regulation is for some reason invalid, it has the force of law. *Boske* v. *Comingore,* 177 U. S. 459; *Caha* v. *United States,* 152 U. S. 211.

Petitioners contend, in effect (Pet. 17), that, because the Public Vessels Act provides that suits thereunder "shall proceed and shall be heard and determined according to the principles of law and to the rules of practice obtaining in like cases between private parties,"[4] the Navy Department may not interpose its rule against disclosure to prevent discovery of the record involved here. Without discussing this inference in detail, it would seem sufficient to point out that Congress, in recent legislation dealing with such records, has made it clear that the authority of the Secretary of the Navy does not suffer the suggested restriction under the Public Vessels Act. Section 5 of the amendatory Act of July 3, 1944 (58 Stat. 725, 46 U.S.C. 795, *infra,* pp. 24-25) added to the Public Vessels Act a provision authorizing civil courts, in cases stayed because of the war, to receive in

[4] The quoted language, from Section 3 of the Suits in Admiralty Act (41 Stat. 526, as amended, 46 U.S.C. 743, *infra,* p. 24), is made applicable by Section 2 of the Public Vessels Act (43 Stat. 1112, 46 U.S.C. 782, *infra,* pp. 23-24) which incorporates the former Act's provisions "in so far as the same are not inconsistent herewith * * *."

evidence records of testimony given before naval courts of inquiry by witnesses who have since become unavailable. A proviso to this section declares:

> That the use of such testimony shall not in any litigation make admissible the remainder of the said record *or compel the production of the remainder of said record by the United States.* (Italics added).

This proviso "implicitly recognizes that such testimony would ordinarily lie beyond the scope of the discovery process provided by the rules of litigation." *Anglo-Saxon Petroleum Co.* v. *United States,* 78 F. Supp. 62, 64 (D. Mass.). If the records of courts of inquiry were available merely on motion for discovery, the quoted statutory language would have practically no meaning. It becomes intelligible only as a congressional precaution to insure that records immune from disclosure do not lose this immunity beyond the limited extent prescribed.

With the exception of two rulings in a single case (*Bank Line* v. *United States,* 1946 A.M.C. 660, 977; 76 F. Supp. 801 (S.D.N.Y.)), the district courts have uniformly denied discovery of records of testimony before courts of inquiry. *The Wright and the Papoose,* 2 F. Supp. 43 (E.D.N.Y.); *The Australia Star,* 1946 A.M.C. 542 (S.D.N.Y.); *Maryland ex rel. Kent* v. *United States,* 1947 A.M.C. 1336 (D. Md.); *Anglo-Saxon Petroleum*

Co. v. *United States,* 78 F. Supp. 62 (D. Mass.). Petitioners' reference (Pet. 14) to a "conflict with decisions in the Second Circuit" is presumably based on the two divergent rulings cited above. The case in which those rulings were made is, in any event, distinguishable from the case at bar in that the district court there was convinced, as the courts below were not, that a "proper showing" had been made for discovery.[5] But the point of present importance is that petitioners can claim no conflict, in terms of this Court's Rules, between circuits.[6] The Court of Appeals' decision in *Bank Line* v. *United States,* 163 F. 2d 133 (C.A. 2), upon which petitioners appear to place some reliance (Pet. 15-17), held only that writs of prohibition and mandamus were improper methods of attacking an order granting discovery, and expressly stated that there was no need then to pass on the question raised here. See 163 F. 2d at 139.

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[5] See 1946 A.M.C. at 978: "Each case rests on its own facts and is dependent upon a proper showing by the moving party before relief can be granted."

[6] It is of some significance, in this connection, that two of the decisions cited above in which discovery was denied are from the same circuit, one from the same district, in which the "conflict" asserted by petitioners arises.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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OCTOBER, 1949

APPENDIX

1. Act of August 19, 1890, as amended, 26 Stat. 320; 28 Stat. 82; 33 U.S.C. 61 et seq., embodying International Rules for Navigation at Sea:

RULES CONCERNING LIGHTS, AND SO FORTH

* * * * *

ART. 2. A steam-vessel when under way shall carry—(a) On or in front of the foremast, or if a vessel without a foremast, then in the forepart of the vessel, at a height above the hull of not less than twenty feet, and if the breadth of the vessel exceeds twenty feet, then at a height above the hull not less than such breadth, so, however, that the light need not be carried at a greater height above the hull than forty feet, a bright white light, so constructed as to show an unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the vessel, namely, from right ahead to two points abaft the beam on either side, and of such a character as to be visible at a distance of at least five miles.

(b) On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side, and of such a character as to be visible at a distance of at least two miles.

(c) On the port side a red light so constructed as to show an unbroken light over an

arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side, and of such a character as to be visible at a distance of at least two miles.

(d) The said green and red side-lights shall be fitted with inboard screens projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.

(e) A steam-vessel when under way may carry an additional white light similar in construction to the light mentioned in subdivision (a). These two lights shall be so placed in line with the keel that one shall be at least fifteen feet higher than the other, and in such a position with reference to each other that the lower light shall be forward of the upper one. The vertical distance between these lights shall be less than the horizontal distance. (33 U.S.C. 72.)

Steering and Sailing Rules

Preliminary—Risk of Collision

Risk of collision can, when circumstances permit, be ascertained by carefully watching the compass bearing of an approaching vessel. If the bearing does not appreciably change, such risk should be deemed to exist. (33 U.S C. 101.)

* * * * *

Art. 19. When two steam-vessels are crossing, so as to involve risk of collision, the vessel

which has the other on her starboard side shall keep out of the way of the other. (33 U.S.C. 104.)

Art. 21. Where, by any of these rules, one of two vessels is to keep out of the way the other shall keep her course and speed.

NOTE.—When in consequence of thick weather or other causes, such vessel finds herself so close that collision can not be avoided by the action of the giving-way vessel alone, she also shall take such action as will best aid to avert collision. (33 U. S. C. 106.)

Art. 22. Every vessel which is directed by these rules to keep out of the way of another vessel shall, if the circumstances of the case admit, avoid crossing ahead of the other. (33 U. S. C. 107.)

Art. 27. In obeying and construing these rules due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger. (33 U. S. C. 112.)

* * * * *

NO VESSEL, UNDER ANY CIRCUMSTANCES, TO NEGLECT PROPER PRECAUTIONS

Art. 29. Nothing in these rules shall exonerate any vessel, or the owner or master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect of any precaution which may be re-

quired by the ordinary practice of seamen, or by the special circumstances of the case. (33 U. S. C. 121.)

2. Public Vessels Act (43 Stat. 1112, 46 U. S. C. 781-782):

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a libel in personam in admiralty may be brought against the United States, or a petition impleading the United States, for damages caused by a public vessel of the United States, and for compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States: *Provided,* That the cause of action arose after the 6th day of April, 1920.

Sec. 2. That such suit shall be brought in the district court of the United States for the district in which the vessel or cargo charged with creating the liability is found within the United States, or if such vessel or cargo be outside the territorial waters of the United States, then in the district court of the United States for the district in which the parties so suing, or any of them, reside or have an office for the transaction of business in the United States; or in case none of such parties reside or have an office for the transaction of business in the United States, and such vessel or cargo be outside the territorial waters of the United States, then in any district court of the United States. Such suits shall be subject to and proceed in accordance with the provisions of an Act entitled "An

Act authorizing suits against the United States in admiralty, suits for salvage services, and providing for the release of merchant vessels belonging to the United States from arrest and attachment in foreign jurisdictions, and for other purposes," approved March 9, 1920, or any amendment thereof, in so far as the same are not inconsistent herewith, except that no interest shall be allowed on any claim up to the time of the rendition of judgment unless upon a contract expressly stipulating for the payment of interest.

3. Suits in Admiralty Act, as amended (41 Stat. 526; 49 Stat. 1987; 46 U. S. C. 743):

Sec. 3. * * * Such suits shall proceed and shall be heard and determined according to the principles of law and to the rules of practice obtaining in like cases between private parties. * * *

4. Act of July 3, 1944, 58 Stat. 723, 725; 46 U. S. C. 795:

Sec. 5. In any case in which either the United States or a claimant against the United States in one of the cases specified in section 1 of this Act [cases stayed because of the war] has been prevented by any stay or suspension provided for in this Act from examining any witness, and in any case where the United States shall establish to the satisfaction of the court that it has refrained from instituting suit or from taking the testimony of any witness in any pending suit in order to avoid endangering the security of naval operations or interfering with such operations and where, in either of

such cases, it shall appear to the satisfaction of the court, on appropriate evidence or by agreement by counsel, that the United States or the claimant, as the case may be, is unable after reasonable efforts to secure the testimony of any such witness, the court shall receive in evidence, in lieu of such testimony, * * * (b) the statement or testimony of such witness before a naval investigation, board of investigation, court of inquiry, or court martial, or Coast Guard investigation: *Provided,* That the use of such testimony shall not in any litigation make admissible the remainder of the said record or compel the production of the remainder of said record by the United States. * * *

5. R.S. 161, 5 U.S.C. 22:

The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it.

6. Admiralty Rule 32:

Upon motion of any party showing good cause therefor and upon notice to all other parties, the court in which an action is pending may (1) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts,

letters, photographs, objects, or tangible things, not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody, or control; or (2) order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated relevant object or operation thereon. The order shall specify the time, place, and manner of making the inspection and taking the copies and photographs and may prescribe such terms and conditions as are just.

7. Naval Courts and Boards, Art. C-15, 34 CFR 12.15:

Unless authorized by the Secretary of the Navy, persons in the naval service and civil employees are prohibited from producing official records or copies thereof in a civil court in answer to subpenas duces tecum, or otherwise, and from disclosing the information described in article 113, Navy Regulations, or the secret and confidential correspondence and information described in article 2005, Navy regulations. In all cases where copies of records are desired by or on behalf of parties to a suit, whether in a Federal or State court, such parties will be informed that it has been the invariable practice of the Navy Department to decline to furnish in the case of legal controversies, at the request of the parties litigant, copies of papers or other information to be used in the course of the proceedings, or to

grant permission to such parties or their attorneys to make preliminary or informal examination of the records, but that the department will promptly furnish copies of papers or records in such cases upon call of the court before which the litigation is pending. In all cases where the production of records in civil courts is authorized, the original records are not to leave the custody of the person producing them. However, copies of such records may be introduced into evidence.

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